

from among any referred applicant except that a preference eligible will not be passed over to select a non-preference eligible, unless procedures under 5 U.S.C. 3318 for passing over a preference eligible are followed.

(d) *Alternative ranking and selection procedures (category rating).* When filling positions using category rating, procedures issued by the Secretary will be followed in lieu of the procedures in part 337, subpart C, except for § 337.304, of this title.

(e) *Passing over preference eligibles.* OPM retains the authority to grant or deny a pass over request of a preference eligible with a compensable service-connected disability of 30 percent or more and to make medical qualifications determinations pertaining to preference eligibles. The Secretary has the authority to grant or deny a pass over request of a preference eligible with a compensable service-connected disability of less than 30 percent.

§ 9901.516 Internal placement.

(a) *Determining levels of work and movement within and across career groups.* The determination of when an action is a promotion, reassignment, or reduction in band for competitive or noncompetitive movement and related pay administration purposes, either between NSPS positions or to an NSPS position from a non NSPS position, must be made by applying the definitions of those terms at § 9901.103.

(b) *Eligibility for promotion to full performance band.* An employee with a rating of record of Level 1 or Level 2 is not eligible for promotion to the full performance band of the position until such time as the employee attains a rating of record of Level 3 or above. An employee who does not have an NSPS rating of record may be promoted to the full performance band of the position if an authorized management official conducts a performance assessment and determines that the employee is performing at the equivalent of Level 3 or above.

(c) *Time after competitive appointment restriction.* Restrictions on the movement of an employee immediately after the employee's initial appointment to Federal service as described in 5 CFR

part 330, subpart E, are not applicable to NSPS positions.

(d) *Details.* There is no time limit on details or any requirement to extend them incrementally. An official personnel action is not required to document a detail unless the detail exceeds one year, crosses Component and/or Agency lines or assigns an employee from NSPS to another pay system within the Component (e.g., NSPS to General Schedule), or documents developmental rotational assignments or deployment.

(e) *NSPS Merit Promotion Program.* In accordance with the Secretary's authority to prescribe regulations for the assignment, reassignment, reinstatement, detail, transfer, and promotion of individuals or employees into or within NSPS, the procedures below, in conjunction with the merit promotion requirements in 5 CFR 335.103(b) constitute the NSPS Merit Promotion Program. Internal placement actions may be made on a permanent or temporary basis using competitive and noncompetitive procedures.

(1) All actions taken under the NSPS Merit Promotion Program, whether involving the identification, qualification, evaluation, or selection of candidates, will be made without regard to race, color, religion, age, gender, national origin, political affiliation, disability, sexual orientation, marital or family status or other prohibited criteria and will be based solely on job-related factors.

(2) Vacancy announcements will identify areas of consideration that are sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of the positions covered. Employees within the area of consideration who are absent for legitimate reason (e.g., on detail, on leave, at training courses, in the military service, or serving in public international organizations or on Intergovernmental Personnel Act assignments) must receive appropriate consideration, if they apply for a vacant position; *i.e.*, they cannot be excluded from consideration because they are absent. Employees who are unable to apply for vacant positions while

they are away may also make other appropriate arrangements for consideration.

(3) To be eligible for promotion or placement, candidates must meet the minimum qualification standards prescribed by either OPM or the Department, as appropriate. Prior to the recruitment process, authorized management officials will identify through job analysis the job-related criteria that will be used to evaluate and determine the best qualified candidates for referral. The job analysis will identify the basic duties and responsibilities of the position being filled; the knowledge, skills, abilities, and/or competencies required to perform the duties and responsibilities; and the factors that are important in evaluating candidates. The job analysis may cover a single position or group of positions, or an occupation or group of occupations, having common characteristics. Candidate evaluation will give due weight to performance appraisals and incentive awards. When evaluating a candidate's performance appraisals, consideration may be given to the differences in performance appraisal systems. Job analysis requirements will conform to the Uniform Guidelines on Employee Selection Procedures in 29 CFR part 1607, and 5 CFR part 300, subpart A.

(4) Management has the right to select or not select from among a group of highly qualified candidates and to select from appropriate sources of candidates.

(5) Components will maintain a temporary record of each promotion to a competitive service position filled through internal competitive procedures to allow reconstruction of the placement action, including documentation on how candidates were rated, ranked, and referred. These records may be destroyed after 2 years or after the program has been formally evaluated by OPM (whichever occurs first) if the time limit for grievance has lapsed and destruction would otherwise be consistent with the Department's Priority Placement Program requirements.

(6) *Competitive actions.* (i) Except as provided in paragraph (e)(7) of this section, competitive procedures apply to promotion of an employee to a higher

pay band (*i.e.*, a higher level of work) and to the following actions:

(A) Temporary promotion or detail to a higher pay band for more than 180 days. Prior service during the preceding 12 months under noncompetitive temporary promotions or details to higher pay-banded positions counts toward the 180-day total. A temporary promotion may be made permanent without further competition, provided the temporary promotion was originally made under competitive procedures and the fact that the temporary promotion might lead to a permanent promotion was made known to all potential candidates;

(B) Reassignment or reduction in band to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by reduction in force regulations at 5 CFR part 351);

(C) Transfer to a position at a higher pay band or with more promotion potential than a position previously held on a permanent basis in the competitive service; and

(D) Reinstatement to a permanent, term, or temporary position at a higher pay band or with more promotion potential than a position previously held on a permanent basis in the competitive service.

(ii) When determining whether the promotion potential of a General Schedule position is lower than that of the promotion potential of the NSPS position to which an employee moves, the definitions of higher, lower, and comparable levels of work under § 9901.103 will be applied.

(7) *Exceptions to competition.* (i) Competitive procedures do not apply to:

(A) Promotion resulting from the upgrading of a position to a higher pay band level without significant change in the duties and responsibilities due to the issuance of a new NSPS classification standard or the correction of an initial classification error;

(B) Promotion resulting from an employee's position being classified at a higher pay band level because of additional duties and responsibilities;

(C) Promotion resulting from previous competitive selection for a position with documented potential to a higher pay band;

(D) Temporary promotion or detail to a higher pay band or a position with known promotion potential for 180 days or less;

(E) Promotion to a higher pay band previously held on a permanent basis in the competitive service from which an employee was separated or demoted for other than performance or conduct reasons;

(F) Promotion, reassignment, reduction in band, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an approved interchange agreement) and did not lose because of performance or conduct reasons;

(G) Consideration of a candidate not given proper consideration in a competitive promotion action;

(H) Placement resulting from reduction in force procedures under 5 CFR part 351; and

(I) The appointment of career SES appointees with competitive service reinstatement eligibility to any position for which they qualify in the competitive service at any salary level, consistent with 5 CFR part 317, subpart G.

(ii) When determining whether the promotion potential of a General Schedule position is lower than that of the promotion potential of the NSPS position to which an employee moves, the definitions of higher, lower, and comparable levels of work under §9901.103 will be applied.

(8) *Alternative promotion procedures.* The Secretary may authorize the use of the following alternative procedures to fill NSPS positions. Use of these alternative procedures does not require the posting of vacancy announcements; however, employees must be made aware that these processes may be utilized via newsletters, bulletin boards, websites, or other common methods of employee communication. Use of these alternative procedures is subject to the requirements of the DoD Priority Placement Program and the Reemploy-

ment Priority List. Employees within the area of consideration who are absent for legitimate reason (e.g., on detail, on leave, at training courses, in the military service, or serving in public international organizations or on Intergovernmental Personnel Act assignments) must receive appropriate consideration, *i.e.*, they cannot be excluded from consideration because they are absent.

(i) *Assessment boards.* (A) Boards may convene to assess internal candidates for current and future advancement opportunities based on pre-established criteria. Pre-established criteria may include experience, training, awards, education, performance evaluation scores (ratings of record) or other appropriate information consistent with merit system principles and the "Uniformed Guidelines on Employee Selection Procedures."

(B) Boards will categorize employees into specific levels of candidates to generate referral lists of ranked candidates for occupational groups. These referral lists are valid for one year from the date generated. Selection from the referral list should be further justified based on specific job-related factors unique to the actual vacancy.

(C) Boards, which should be comprised of senior level managers (subject matter experts for each particular occupational group), may be convened on an ad hoc basis or may be held annually in conjunction with the performance evaluation process.

(ii) *Alternate certification.* A selecting official may make a by-name request for an individual from any appropriate source of Department or Component employees. The employee may be selected if ranked within the highest quality group as determined by rating factors established for the position.

(iii) *Exceptional performance promotion.* (A) An employee whose most recent rating of record is a Level 5 performance rating may be promoted to a vacant position in a higher pay band when the vacant position has the same occupational series (or related interdisciplinary/interoccupational series) and similar function as the position the employee held at the time he or she received the Level 5 rating.

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(B) Selecting officials must determine and document the area of consideration, and must consider all employees in the area of consideration whose current Level 5 rating was based on performance in the same occupational series and similar function as the vacancy being filled.

(9) *Grievances*. Employees have the right to file a complaint relating to a

promotion action. Such complaints will be resolved under appropriate grievance procedures. The standards for adjudicating complaints are set forth in 5 CFR part 300, subpart A. There is no right of appeal to OPM, but OPM may conduct investigations of substantial violations of OPM requirements.